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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LOCATA LBS LLC, a California limited
 liability company,

Plaintiff,

v.

PAYPAL, INC., a Delaware corporation, and
 EBAY INC., a Delaware corporation,

Defendants.

CASE NO.: 4:14-cv-01864-JSW

**PLAINTIFF LOCATA LBS LLC'S
 RESPONSE TO DEFENDANTS'
 OBJECTION TO REQUEST FOR
 JUDICIAL NOTICE**

Date: July 25, 2014
 Time: 9:00 a.m.
 Room: Ctrm 5, 2nd Floor
 Judge: Honorable Jeffrey S. White

1 Plaintiff Locata LBS LLC (“Locata”) hereby responds to the objections by Defendants eBay
2 Inc. and Paypal, Inc. (collectively “Defendants”) to the Request for Judicial Notice In Support of
3 Plaintiff Locata LBS LLC’s Opposition To Defendants’ Motion To Dismiss Complaint Pursuant To
4 Rule 12(b)(6) (“Request”). *See* Dkt. 54.

5 Locata’s Request seeks judicial notice of publicly available web-pages as well as an issued
6 patent now owned by Defendants. Notably, Defendants do not deny that Locata’s request for
7 judicial notice meets the requirements of Fed. R. Evid. 201(b)(1) and (2). Defendants also do not
8 deny that web-pages and patents are properly the subjects of judicial notice because they are
9 generally known within the trial court’s territorial jurisdiction and can be accurately and readily
10 determined from sources whose accuracy cannot reasonably be questioned. *See, e.g., NetApp, Inc.*
11 *v. Nimble Storage, Inc.*, 513CV05058-LHK-HRL, 2014 WL 1903639, at *4 (N.D. Cal. May 12,
12 2014) (judicially noticing web-pages of defendant’s website); *Foster Poultry Farms v. Alkar-*
13 *Rapidpak-MP Equip., Inc.*, 868 F. Supp. 2d 983, 990 (E.D. Cal. 2012) (taking judicial notice of a
14 U.S. patent on technology related to the dispute).

15 Instead, Defendants argue that only facts, and not documents, can be judicially noticed.
16 However, this is an inaccurate and trivial argument. For example, courts may take judicial notice of
17 the existence of particular documents, without necessarily taking judicial notice of the substance in
18 the documents as well. *See, e.g., Signature Mgmt. Team, LLC v. Automattic, Inc.*, 941 F. Supp. 2d
19 1145, 1147-48 (N.D. Cal. 2013) (taking judicial notice of the existence of online publications
20 located at identified web addresses, but not the facts cited therein); *Daghlian v. DeVry Univ., Inc.*,
21 461 F. Supp. 2d 1121, 1143 (C.D. Cal. 2006) (internal citations omitted) (“In deciding a Rule
22 12(b)(6) motion, a court may judicially notice not only . . . the existence of a particular document,
23 but the substance of the document as well.”).

24 Defendants argue that *Meador v. Wedell*, CIV S-10-0901 KJM, 2012 WL 360199 (E.D. Cal.
25 Feb. 2, 2012) supports a contrary conclusion, but it does not. In *Meador*, the court denied the
26 request for judicial notice since the plaintiff sought judicial notice of disputed facts relating to the
27 merits of the plaintiff’s claim. *Id.* at *8. As such, taking judicial notice of the document itself
28 would have made no sense in the context of that particular situation. Here, on the other hand,

1 judicial notice is completely appropriate given the fact that the existence of the documents, and the
2 facts included therein, are not in dispute. Moreover, while Locata seeks judicial notice of the
3 documents submitted to the Court, the request for judicial notice also inherently relates to the facts
4 contained therein. As such, Defendants' argument simply amounts to a hyper-technicality that
5 exalts form over substance.

6 Defendants also object to the Request by citing to three cases that stand for the unremarkable
7 proposition that courts have inherent power to deny requests for judicial notice if the facts are
8 deemed to be irrelevant by the court. But Defendants' citations and the objection itself completely
9 misses the mark here since the submitted documents *are relevant*. As shown in Locata's opposition
10 briefing, these documents are in fact relevant to both establishing the context of the patent, which
11 Defendants argue should never have been issued, and the disingenuous nature of Defendants'
12 challenge on patent subject matter eligibility grounds. *See Pratap v. Wells Fargo Bank, N.A.*, C 12-
13 06378 MEJ, 2013 WL 5487474, at *1 n.1 (N.D. Cal. Oct. 1, 2013) (taking judicial notice of "the
14 fact that the document states something to give context, as opposed to for the truth of the matter
15 asserted in any document."); *Churchill v. Harris*, C 12-01740 LB, 2012 WL 5877486, at *5 n.2
16 (N.D. Cal. Nov. 20, 2012) (taking judicial notice of sample letters sent by the California DOJ
17 Bureau of Firearms to provide context only); *Wozniak v. Align Tech., Inc.*, 850 F. Supp. 2d 1029,
18 1039 n.6 (N.D. Cal. 2012) (judicially noticing exhibits "solely for the limited purpose of
19 determining the context in which allegedly misleading statements were made"). Defendants only
20 allege in a conclusory fashion that these documents are not relevant, but do not present any specific
21 reason as to why.

22 It is not Defendants' place to try to preclude facts simply because they feel that the facts are
23 not relevant. The fact that Defendants have not alleged any prejudice or objected under Fed. R.
24 Evid. 401 further highlights the lack of merit to Defendants' objections here. Therefore, Locata
25 respectfully requests the Court to grant its request for judicial notice.

26
27 DATED: June 25, 2014

Respectfully submitted,

28 GLASER WEIL FINK HOWARD

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